

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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ASSAF ZAMLER	:	: CIVIL ACTION
individually and derivatively on behalf	:	
of Eco Friendly Services, LLC	:	: NO. 2:22-cv-03169
Plaintiff	:	
v.	:	
	:	
EYAL RAZ	:	
Defendant	:	

MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Eyal Raz, through his attorneys Eli Gabay, Esquire and Lionel Artom-Ginzburg, Esquire, brings the following Motion to Dismiss:

1. Plaintiff Zamler, pursuant to ¶6 of his Complaint [ECF 1] is a citizen of Florida.
2. Defendant Raz, pursuant to ¶8 of the Complaint [ECF 1] is a citizen of Pennsylvania.
3. Eco Family Services, LLC, which is a Plaintiff in this action derivatively, is also a citizen of Pennsylvania, pursuant to ¶7.
4. Further, its base of operations, such as this defunct company has, was in Pennsylvania. See Id.
5. A Limited Liability Company has the citizenship of its members. Zambelli Fireworks Manufacturing Company v. Wood, 592 F.3d 412, 418 (3d Cir. 2010).
6. As such, Eco Family Services has citizenship of both Florida and Pennsylvania.
7. Federal Courts are courts of limited jurisdiction.
8. Under the jurisdictional provisions of 28 U.S.C. §1332(a), diversity jurisdiction is only appropriate when there is complete diversity between Plaintiffs and Defendants, and claimed damages exceed \$75,000.
9. Complete diversity means just that-- jurisdiction “applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant” Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996).
10. An attack on diversity of citizenship in Federal District Court under Rule 12(b)(1) is considered to be a “facial” attack where the attack “concerns ‘an alleged pleading deficiency’ whereas a factual attack concerns ‘the actual failure of [a plaintiff’s] claims to comport [factually] with the jurisdictional prerequisites.’” Lincoln Ben. Life Co. v. AEI Life, LLC, 800 F.3d 99, 105 (3d Cir. 2015).
11. The present motion is thus a facial attack, there is no diversity of citizenship within the parties of this case as pleaded, as “all of the LLC’s members ‘must be diverse from all parties on the opposing side’” (Id.) and no such diversity here exists, with parties on both sides from Pennsylvania.
12. Defendant has proposed a stipulation to move this matter to the Commerce Court of the Philadelphia County Court of Common Pleas, but has received no response from the Plaintiff Mr. Zamler. The Defendant does not accept service under these circumstances, nor has service been effectuated.

13. As there is no diversity jurisdiction, there is no Federal subject matter jurisdiction for this Honorable Court to hear this matter, as no Federal question was alleged, and it should be thus dismissed under Rule 12(b)(1).

WHEREFORE, Defendant, Eyal Raz, respectfully requests than an Order enter in the form attach hereto, DISMISSING Plaintiffs' Complaint for lack of subject matter jurisdiction.

Respectfully submitted,

/s

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August 31, 2022

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	:	
EYAL RAZ	:	
Defendant		

CERTIFICATE OF SERVICE

I, Eli Gabay, Esquire, do state that on this date I caused the preceding Motion to Dismiss to be served upon counsel for Plaintiffs, Nicholas Foppiano, Esquire, by the CM/ECF system of the Eastern District of Pennsylvania.

/s

ELI GABAY, ESQUIRE

August 31, 2022